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KJS Construction, Inc. and New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America. Case 2–CA–36393–1

April 25, 2005, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND SCHAMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on July 12, August 17, and September 28, 2004, respectively, the General Counsel issued the complaint on October 29, 2004 against KJS Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the Act. The Respondent failed to file an answer.

On January 21, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On January 26, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 12, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 3, 2004, notified the Respondent that unless an answer was received by December 17, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with an office and place of business located at 244 5th Avenue, Suite 268, New York, New York, has been engaged in the business of providing general contracting services, including at project sites located at St. Nicholas Avenue between 199th Street and 120th Street,

New York, New York (the St. Nicholas Avenue site), and at Amsterdam Avenue around 145th Street, New York, New York.

Annually, in conducting its operations described above, the Respondent performs services valued in excess of \$50,000 to general contractors doing business within the State of New York, which themselves are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent acting in its behalf:

Shamsuddin Riza	President and CEO
Josh Riza	Supervisor
Von Dobson	Supervisor

The Respondent, by Riza:

(a) In or around May 2004, in front of the St. Nicholas Avenue site:

(i) Created the impression among its employees that their union activities were under surveillance.

(ii) Directed employees not to associate with representatives of the Union.

(b) In or around May or June 2004, at the St. Nicholas Avenue site, instructed employees not to wear apparel with union insignia.

(c) On or about June 19, 2004, at the St. Nicholas Avenue site, informed employees that they were discharged because they attended a representation hearing before the Board.

On or about the dates in 2004 set forth opposite their names, the Respondent discharged the following employees:

Timothy Capps	June 3
Willie Wilson	June 9
Alex Johnson	June 19
Charles Johnson	June 19
Vincent Maldonado	In or around June
Wilbert Laster	In or around June

Since on or about the dates set forth opposite the employees' names set forth above, the Respondent has failed and refused to reinstate or offer to reinstate the employees to their former positions of employment.

The Respondent discharged the above-named employees because they joined and supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The Respondent discharged Alex Johnson and Charles Johnson also because they appeared, with the Union, at a representation hearing before the Board in Case 2-RC-22861.

CONCLUSIONS OF LAW

1. By creating the impression of surveillance of employees' union activities, directing employees not to associate with representatives of the Union, instructing employees not to wear apparel with union insignia, and informing employees that they were discharged because they attended a representation hearing before the Board, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging employees Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson because they joined and supported the Union and engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By discharging employees Alex Johnson and Charles Johnson because they appeared, with the Union, at a representation hearing before the Board, the Respondent has discriminated against employees for giving testimony under the Act, in violation of Section 8(a)(4) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated the Act by discharging Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. We also shall order the Respondent to make each of these employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files all references to the unlawful discharges, and to notify the employees in writing that this has been done

and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, KJS Construction, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression among employees that their union activities are under surveillance.

(b) Directing employees not to associate with representatives of the Union.

(c) Instructing employees not to wear apparel with union insignia.

(d) Informing employees that they were discharged because they attended a representation hearing before the Board.

(e) Discharging employees because they join or support a union, engage in concerted activities, or appear at a representation hearing before the Board.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson for any loss of earnings and other benefits resulting from their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the at-

tached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 25, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT create the impression among you that your union activities are under surveillance.

WE WILL NOT direct you not to associate with representatives of New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, or any other labor organization.

WE WILL NOT instruct you not to wear apparel with union insignia.

WE WILL NOT inform you that you were discharged because you attended a representation hearing before the Board.

WE WILL NOT discharge you because you join or support New York City District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, or any other labor organization, engage in concerted activities, or attend a representation hearing before the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharges of Timothy Capps, Alex Johnson, Charles Johnson, Wilbert Laster, Vincent Maldonado, and Willie Wilson, and, WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

KJS CONSTRUCTION, INC.